In the Supreme Court of the United States

OCTOBER TERM, 1934

No. 260

AMAZON PETROLEUM CORPORATION ET AL.,
petitioners

v.

ARCHIE D. RYAN, S. D. BENNETT, AND PHIL E. BAER

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

SUPPLEMENTAL MEMORANDUM FOR THE RESPONDENTS

In the original memorandum filed by the respondents herein the attention of the Court was directed to the omission in the Executive Order of September 13, 1933, of the second paragraph of Section 4 of Article III of the Code of Fair Competition for the Petroleum Industry. On September 25, 1934, an Executive Order was issued duly reinstating this paragraph as a part of the Code. A certified copy of this Executive Order, which is printed in the Appendix *infra*, has been filed with the Clerk of this Court.

Since the filing of the original memorandum the Government has considered the legal effect of the omission of this paragraph in the Executive Order of September 13, 1933, and has concluded that it cannot, and therefore it does not intend to, prosecute petitioners or other producers of oil in Texas, criminally or otherwise, for exceeding, at any time prior to September 25, 1934, the quotas of production assigned to them under the laws of Texas.[1] If, however, petitioners or other producers produce in excess of such quotas after September 25, 1934, the Government intends to prosecute them under the National Industrial Recovery Act, since by reason of the Executive Order of September 25, 1934, such production will after that date be a violation of the Code.

The Government believes that the Court may, on the record in this case, consider and determine the validity of Section 4 of Article III, as thus amended by the Executive Order of September 25, 1934. See *Texas Co.* v. *Brown,* 258 U.S. 466, 474; *Pugh* v. *McCormick,* 14 Wall. 361, 374; *Watts, Watts & Company* v. *Unione Austriaca &c.,* 248 U.S. 9, 21; *American Foundries* v. *Tri-City Council,* 257 U.S. 184, 201. Both courts below considered the case on the assumption that the second paragraph of this

[1] Although the second paragraph of Section 4 of Article III was a part of the Code for a short period prior to September 13, 1933, the Government has concluded that no legal basis for prosecution for production in Texas during this period exists.

section was a part of the Code. Moreover, the considerations bearing upon the validity of this paragraph are in no material respects now different from those existing at the time of the original adoption of the Code. Finally, petitioners have assumed during the entire course of this case that this paragraph had not been eliminated from the Code (see Pet. pp. 25–26) and have informed the Government that they desire the Court on this record to consider and determine the validity of this paragraph.

It is submitted that there is sufficient basis for jurisdiction in equity in this case to restrain the enforcement of the second paragraph of Section 4, if invalid, despite the fact that it has been operative only since September 25, 1934. See *Hygrade Provision Company* v. *Sherman,* 266 U.S. 497, 499–500; *Terrace* v. *Thompson,* 263 U.S. 197, 212, 214–216; *Philadelphia Company* v. *Stimson,* 223 U.S. 605, 620–621; *Pierce* v. *Society of Sisters,* 268 U.S. 510; *Euclid* v. *Ambler Realty Company,* 272 U.S. 365.

Should this Court conclude that it may not in this case consider and determine the validity of Section 4 of Article III of the Code, as amended by the Executive Order of September 25, 1934, respondents respectfully submit that the writ of certiorari, if granted, should be limited to the questions relating to Section 9 (c) of the National Industrial Recovery Act and the Regulations promulgated by the Secretary of the Interior in aid of the

enforcement of that section, since the other questions in this case, relating to Section 4 of Article III of the Code, would be moot, in view of the fact that the Government cannot and does not intend to prosecute petitioners for producing prior to September 25, 1934, in excess of their State quotas.

Respectfully submitted.

J. CRAWFORD BIGGS,
Solicitor General.

HAROLD M. STEPHENS,
Assistant Attorney General.

CARL MCFARLAND,
M. S. HUBBERMAN,
Special Assistants to the Attorney General.

SEPTEMBER 1934.

APPENDIX

The Executive Order of September 25, 1934, reads as follows:

EXECUTIVE ORDER

AMENDMENT TO THE CODE OF FAIR COMPETITION FOR THE PETROLEUM INDUSTRY

WHEREAS, the Administrator of the Code of Fair Competition for the Petroleum Industry has submitted for my approval a proposed amendment to said Code,

NOW, THEREFORE, I, by virtue of and pursuant to the authority vested in me by Title I of the National Industrial Recovery Act of June 16, 1933, (c. 90, 48 Stat. 195), do hereby find that:

(1) An application has been duly made pursuant to and in full compliance with the provisions of Title I of said Act for my approval of an amendment to Section 4 of Article III of said Code; and

(2) Due notice and opportunity for hearings to interested parties has been given, and hearings have been held upon said application pursuant to such notice; and

(3) Said amendment complies in all respects with the pertinent provisions of the Act, including clauses (1) and (2) of Subsection (a) of Section 3 of Title I of said Act, and will tend to effectuate the policy of said Title.

NOW, THEREFORE, I, by virtue of and pursuant to the authority vested in me by said Title, do hereby approve an amendment

to Section 4 of Article III of said Code of Fair Competition for the Petroleum Industry so as to make said Section read as follows:

SECTION 4. The subdivision into pool and/or lease and/or well quotas of the production allocated to each State is to be made within the State. Should quotas allocated in conformity with the provisions of this Section and/or Section 3 or Article III of this Code not be made within the State or if the production of petroleum within any State exceeds the quota allocated to said State, the President may regulate the shipment of petroleum or petroleum products in or affecting interstate commerce out of said State to the extent necessary to effectuate the purposes of the National Industrial Recovery Act and/or he may compile such quotas and recommend them to the State Regulatory Body in such State, in which event it is hereby agreed that such quotas shall become operating schedules for that State.

If any subdivision into quotas of production allocated to any State shall be made within a State any production by any person, as person is defined in Article I, Section 2 of this Code, in excess of any such quota assigned to him, shall be deemed an unfair trade practice and in violation of this Code.

FRANKLIN D. ROOSEVELT.

HYDE PARK, N.Y.,
September 25, 1934.

U. S. GOVERNMENT PRINTING OFFICE: 1934